

days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying gasoline, oxygenate, or ethanol denaturant remained in the gasoline, oxygenate, or ethanol denaturant distribution system for fewer than or more than twenty-five days.

(d) Any person liable under § 80.1662(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

§ 80.1666 Additional requirements for foreign small refiners and foreign small volume refineries.

The provisions of this section apply to certain foreign refiners and importers during the period January 1, 2017 through December 31, 2019. After December 31, 2019, foreign refiners are not subject to compliance requirements under subpart H of this part, or this subpart O; instead, the importer of any foreign-produced gasoline shall be responsible for compliance with the standards and requirements of this subpart O that relate to importers.

(a) *Definitions.* (1) *Foreign small refiner* is a foreign refiner that meets the definition of a small refiner under § 80.1620.

(2) *Foreign small volume refinery* is a foreign refinery that meets the definition of a small volume refinery under § 80.1621.

(3) *Sulfur-FRGAS*, for this subpart, means gasoline produced from January 1, 2017 through December 31, 2019, at a foreign refinery of a refiner that has been approved as a small refiner or a small volume refinery under § 80.1622, and that is imported into the United States.

(4) *Non-Sulfur-FRGAS* means gasoline that is produced at a foreign refinery that has not been approved as a small refiner refinery or small volume refinery under § 80.1622, gasoline produced at a foreign refinery of an approved small refiner or at an approved small volume refinery under § 80.1622 that is not imported into the United States, and gasoline produced at a foreign refinery that is approved during a year when the foreign refiner has opted to not participate in the Sulfur-FRGAS pro-

gram under paragraph (c)(3) of this section.

(5) *Certified Sulfur-FRGAS* means Sulfur-FRGAS the foreign refiner intends to include in the foreign refinery's sulfur compliance calculations under §§ 80.195 and 80.205 and does include in these compliance calculations when reported to EPA.

(6) *Non-Certified Sulfur-FRGAS* means Sulfur-FRGAS that is not Certified Sulfur-FRGAS.

(b) *Petition for approval of small refiner or small volume refinery status.* To be approved for small refiner status or small volume refinery status a foreign refiner must submit a petition for approval as provided under § 80.1622 and this section. If small refiner status or small volume refinery status is approved, the foreign refiner may produce gasoline for export to the United States, during the period starting January 1, 2017 and ending December 31, 2019, that is subject to the sulfur content standards of subpart H of this part at § 80.195 that were applicable to refiners from 2006 through 2016. A foreign refiner is not eligible to generate sulfur credits under subpart H of this part or this subpart O, as this occurs through the importer.

(c) *General requirements for foreign refiners approved as small refiners or small volume refinery status.* A foreign refiner of a refinery that has been approved as a small refiner refinery or a small volume refinery must designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Sulfur-FRGAS, the foreign refiner must meet the sulfur standards of subpart H of this part as described in paragraph (b) of this section and the requirements of this section.

(2) In the case of Non-Certified Sulfur-FRGAS, the foreign refiner shall meet all the following provisions, except the foreign refiner shall substitute the name Non-Certified Sulfur-FRGAS for the names "reformulated gasoline" or "RBOB" wherever they appear in the following provisions:

(i) The designation requirements in this section.

(ii) The recordkeeping requirements under § 80.1653.

(iii) The reporting requirements in § 80.1652 and this section.

(iv) The product transfer document requirements in § 80.1651 and this section.

(v) The prohibitions in § 80.1660 and this section.

(vi) The independent audit requirements under § 80.415 and paragraph (h) of this section; and the attest engagement provisions of §§ 80.125 through 80.127, 80.128(a), (b), (c), and (g) through (i), and 80.130.

(3)(i) Any foreign refiner that has been approved as a small refiner or whose refinery has been approved as a small volume refinery under this subpart O may elect to classify no gasoline imported into the United States as Sulfur-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section shall meet all the following requirements:

(A) Apply to an entire calendar year averaging period, and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States.

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(d) *Designation, product transfer documents, and foreign refiner certification.*

(1) Any approved foreign small refiner or any foreign refiner having an approved small volume refinery under this subpart O must designate each batch of Sulfur-FRGAS as such at the time the gasoline is produced, unless the refinery has elected to classify no gasoline exported to the United States as Sulfur-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Sulfur-FRGAS prior to its being imported into the United States, it must include all the following information as part of

the product transfer document information in this section:

(i) Identification of the gasoline as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS.

(ii) The name and EPA refinery registration number of the refinery where the Sulfur-FRGAS was produced.

(3) On each occasion when Sulfur-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the Sulfur-FRGAS that meets all the following requirements:

(i) The certification shall include the report of the independent third party under paragraph (f) of this section, and all the following additional information:

(A) The name and EPA registration number of the refinery that produced the Sulfur-FRGAS.

(B) The identification of the gasoline as Certified Sulfur-FRGAS or Non-Certified Sulfur-FRGAS.

(C) The volume of Sulfur-FRGAS being transported, in gallons.

(D) In the case of Certified Sulfur-FRGAS, the sulfur content as determined under paragraph (f) of this section, and a declaration that the Sulfur-FRGAS is being included in the compliance calculations under § 80.205 for the refinery that produced the Sulfur-FRGAS.

(ii) The certification shall be made part of the product transfer documents for the Sulfur-FRGAS.

(e) *Transfers of Sulfur-FRGAS to non-U.S. markets.* The foreign refiner is responsible to ensure that all gasoline classified as Sulfur-FRGAS is imported into the United States. A foreign refiner may remove the Sulfur-FRGAS classification, and the gasoline need not be imported into the United States, but only if—

(1)(i) The foreign refiner excludes the volume and sulfur content of the gasoline from the compliance calculations under § 80.205.

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the sulfur content and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party do all the following:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms.

(ii) Determine the volume of Sulfur-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading).

(iii) Obtain the EPA-assigned registration number of the foreign refinery.

(iv) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States.

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party—

(i) Collect a representative sample of the Certified Sulfur-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery.

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for sulfur in accordance with the methodology and requirements specified in § 80.1630, by either of the following:

(A) The third party analyzing the sample.

(B) The third party observing the foreign refiner analyzing the sample.

(iii) Review original documents that reflect movement and storage of the certified Sulfur-FRGAS from the refinery to the load port, and from this review determine all the following:

(A) The refinery at which the Sulfur-FRGAS was produced.

(B) That the Sulfur-FRGAS remained segregated from Non-Sulfur-FRGAS, Non-Certified Sulfur-FRGAS, and other

Certified Sulfur-FRGAS produced at a different refinery.

(3) The independent third party shall submit a report—

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (m)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party must do all the following:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f).

(ii) Be independent under the criteria specified in § 80.65(f)(2)(iii).

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Except as described in paragraph (g)(1)(ii) of this section, any foreign refiner and any U.S. importer of Certified Sulfur-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the sulfur value.

(ii) Where a vessel transporting Certified Sulfur-FRGAS off loads this gasoline at more than one U.S. port of entry, and the conditions of paragraph (g)(2) of this section are met at the first U.S. port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the U.S. importer obtains a certification from the vessel owner,

meeting the requirements of paragraph (r) of this section that the vessel has not loaded any gasoline or blendstock between the first U.S. port of entry and the subsequent port of entry.

(2) The U.S. importer and the foreign refiner shall treat the gasoline as Non-Certified Sulfur-FRGAS, and the foreign refiner shall exclude the gasoline volume and properties from its gasoline sulfur compliance calculations under § 80.205 under either of the following circumstances:

(i) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent.

(ii) The sulfur value determined at the port of entry is higher than the sulfur value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by ASTM.

(h) *Attest requirements.* All the following additional procedures shall be carried out by any foreign refiner of Sulfur-FRGAS as part of the applicable attest engagement for each foreign refinery under § 80.415:

(1) The inventory reconciliation analysis under the attest engagement provisions of § 80.128(b) and the tender analysis under § 80.128(c) shall include Non-Sulfur-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Sulfur-FRGAS, and of Non-Certified Sulfur-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in the attest engagement provisions of § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Sulfur-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Sulfur-FRGAS, in accordance with the attest engagement guidelines in

§ 80.127, and for each vessel selected perform all the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the U.S. importer under paragraph (n) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Sulfur-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Sulfur-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Sulfur-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Sulfur-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Sulfur-FRGAS was mixed with any Non-Certified Sulfur-FRGAS, Non-Sulfur-FRGAS, or any Certified Sulfur-FRGAS produced at a different refinery.

(5) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport certified and Non-Certified Sulfur-FRGAS, in accordance with the attest engagement guidelines of § 80.127, and for each vessel selected perform the following:

(i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.

(ii) Agree the vessel's departure and arrival locations and dates from the independent third party and U.S. importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Sulfur-FRGAS, and perform all the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under this paragraph (h)(6) where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor must—

(i) Be independent of the foreign refiner.

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in the attest engagement provisions of §§ 80.125 through 80.130, 80.415 and this paragraph (h).

(iii) Sign a commitment that contains the provisions specified in this paragraph (h) with regard to activities and documents relevant to compliance with the requirements of the attest engagement provisions of §§ 80.125 through 80.130, 80.415 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the following provisions as a condition to being approved for small refiner status or small volume refinery status:

(1) Any U.S. EPA inspector or auditor will be given complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where—

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Sulfur-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to all the following:

(A) Approval of the refiner as a small refiner or approval of the refinery as a small volume refinery.

(B) The volume and sulfur content of Sulfur-FRGAS.

(C) The proper classification of gasoline as being Sulfur-FRGAS or as not being Sulfur-FRGAS, or as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS.

(D) Transfers of title or custody to Sulfur-FRGAS.

(E) Sampling and testing of Sulfur-FRGAS.

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.415, including work papers.

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service located in the District of Columbia will be named.

Service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart O.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) The substantive and procedural laws of the United States shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for approval as a small refiner or for small volume refinery status, producing and exporting gasoline under such approval, and all other actions to comply with the requirements of this subpart O constitute actions or activities that satisfy the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart O, including conduct that violates 18 U.S.C. 1001 or Clean Air Act section 113(c)(2) (42 U.S.C. 7413(c)(2)).

(6) The foreign refiner, or its agents or employees, must not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) must be signed by the owner or president of the foreign refiner business.

(8) In any case where FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Sulfur-FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section.

(j) *Sovereign immunity.* By submitting a petition for approval as a small refiner or approval of a small volume refinery under this subpart O and this section, or by producing and exporting gasoline to the United States under such an approval under this section, the foreign refiner, its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart O, including conduct that violates 18 U.S.C. 1001 or Clean Air Act section 113(c)(2) (42 U.S.C. 7413(c)(2)).

(k) *Bond posting.* Any foreign refiner must meet the following requirements as a condition to being approved for small refiner or small volume refinery status:

(1) The foreign refiner shall post a bond of the amount calculated using the following equation:

$$\text{Bond} = G \times \$ 0.01$$

Where:

Bond = Amount of the bond in U. S. dollars.

G = The largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of three calendar years: the calendar year immediately preceding the date the approval petition is submitted, the calendar year the approval petition is submitted, and each succeeding calendar year.

(2) Bonds shall be posted by performing any of the following:

(i) Paying the amount of the bond to the Treasurer of the United States.

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy U.S. administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third

party and the nature of the surety agreement.

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall—

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart O, including where such conduct violates 18 U.S.C. 1001 and Clean Air Act section 113(c)(2) (42 U.S.C. 7413(c)(2));

(ii) Be provided by a corporate surety that is listed in the U.S. Department of Treasury Circular 570 “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies” (Available from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD, 20782. Also available on the Internet at <http://www.fms.treas.gov/c570/c570.html>); and

(iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest averaging period that the foreign refiner produces gasoline pursuant to the requirements of this subpart O.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) *English language reports.* Any report or other document submitted to EPA by any foreign refiner must be in English, or must include an English language translation.

(m) *Prohibitions.* (1) No person may combine Certified Sulfur-FRGAS with any Non-Certified Sulfur-FRGAS or Non-Sulfur-FRGAS, and no person may

combine Certified Sulfur-FRGAS with any Certified Sulfur-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (n) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (m)(1) of this section, or that otherwise violates the requirements of this section.

(n) *U.S. importer requirements.* Any U.S. importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being Sulfur-FRGAS or as Non-Sulfur-FRGAS, and each batch classified as Sulfur-FRGAS shall be further classified as Certified Sulfur-FRGAS or as Non-certified Sulfur-FRGAS.

(2) Gasoline shall be classified as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Sulfur-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Sulfur-FRGAS, any U.S. importer shall perform the following procedures:

(i) In the case of both Certified and Non-Certified Sulfur-FRGAS, have an independent third party—

(A) Determine the volume of gasoline in the vessel.

(B) Use the foreign refiner’s Sulfur-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Sulfur-FRGAS.

(C) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States.

(D) Determine the date and time the vessel arrives at the U.S. port of entry.

(ii) In the case of Certified Sulfur-FRGAS, have an independent third party—

(A) Collect a representative sample from each vessel compartment subsequent to the vessel’s arrival at the U.S.

port of entry and prior to off loading any gasoline from the vessel.

(B) Prepare a volume-weighted vessel composite sample from the compartment samples.

(C) Determine the sulfur value using the methodologies specified in § 80.1630, by the third party analyzing the sample, or by the third party observing the importer analyzing the sample.

(4) Any importer shall submit reports within thirty days following the date any vessel transporting Sulfur-FRGAS arrives at the U.S. port of entry—

(i) To the Administrator containing the information determined under paragraph (n)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (n)(3) of this section.

(5) Any U.S. importer shall meet the applicable requirements of this subpart O, including sulfur content standards specified in § 80.1603, for any imported gasoline that is not classified as Certified Sulfur-FRGAS under paragraph (n)(2) of this section.

(o) *Truck imports of Certified Sulfur-FRGAS produced by a foreign small refiner or foreign small volume refinery.* (1) Any refiner whose Certified Sulfur-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet all the following requirements:

(i) Certification under paragraph (d)(5) of this section.

(ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section.

(iii) Attest under paragraph (h) of this section.

(iv) Importer testing under paragraph (n)(3) of this section.

(2) These alternative procedures must ensure Certified Sulfur-FRGAS remains segregated from Non-Certified Sulfur-FRGAS and from Non-Sulfur-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses all the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Sulfur-FRGAS from that refinery from all other gasoline.

(ii) Contracts with any terminals and/or pipelines that receive and/or

transport Certified Sulfur-FRGAS, that prohibit the commingling of such Certified Sulfur-FRGAS with any of the following:

(A) Other Certified Sulfur-FRGAS from other refineries.

(B) All Non-Certified Sulfur-FRGAS.

(C) All Non-Sulfur-FRGAS

(iii) Procedures for obtaining and reviewing truck loading records and U.S. import documents for Certified Sulfur-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States.

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Sulfur-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section must be submitted to EPA along with the application for small refiner status or small volume refinery status under § 80.1622 and this section.

(p) *Withdrawal or suspension of a foreign refinery's small refiner or small volume refinery status approval.* EPA may withdraw or suspend approval where any of the following occur:

(1) A foreign refiner fails to meet any requirement of this section.

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section.

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart O.

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(q) [Reserved]

(r) *Additional requirements for petitions, reports and certificates.* Any petition for approval, any alternative procedures under paragraph (o) of this section, and any certification under paragraph (d)(3) of this section shall be—

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator; and

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the applicable requirements of 40 CFR part 80, subparts H and O, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 CFR part 80, subpart O, including 40 CFR 80.1666 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000, and/or imprisonment for up to five years.

§ 80.1667 Attest engagement requirements.

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, 80.1666, and other sections of this part 80 the attest engagements for importers and refiners must include the following procedures and requirements each year.

(a) *Refiners subject to national standards and Small Refiner and Small Volume Refinery Status.* (1) If the refiner asserts small refinery status or small volume refinery status for the refinery, obtain the EPA approval letter for the refinery to determine the refinery's applicable annual average standard and credit generation status.

(2) Determine whether the refinery applied the correct annual average sulfur standard and whether it was eligi-

ble to generate credits and report the finding.

(3) If the annual average sulfur standard is incorrect or credit generation was inappropriate, recalculate compliance using the appropriate sulfur standard and using appropriate credits and report as a finding.

(b) *EPA reports.* (1) Obtain and read a copy of the refinery's or importer's annual sulfur reports filed with EPA for the year.

(2) Agree the yearly volume of gasoline reported to EPA in the sulfur reports with the inventory reconciliation analysis under the attest engagement provisions of § 80.128.

(3) Calculate the annual average sulfur level for all gasoline and agree that value with the value reported to EPA.

(4) Obtain and read a copy of the refinery's or importer's sulfur credit report.

(5) Agree the information in the refinery's or importer's batch reports filed with EPA under §§ 80.75 and 80.105, and any laboratory test results, with the information contained in the annual sulfur report required under § 80.1652.

(c) *Credit generation before 2017.* In the case of a refinery that generates credits during 2014 through 2016—

(1) Obtain a written representation from the company representative stating the refinery produces gasoline from crude oil.

(2) Obtain the annual average sulfur level from paragraph (b)(3) of this section.

(3) Compute and report as a finding the total number of sulfur credits generated, and agree this value with the value reported to EPA.

(d) *Credit generation in 2017 and thereafter.* The following procedures shall be completed for a refinery or importer that generates credits in 2017 and thereafter:

(1) Obtain the annual average sulfur level for gasoline from paragraph (b)(3) of this section.

(2) If the sulfur value under paragraph (d)(1) of this section is less than 10 ppm, compute and report as a finding the difference between the sulfur level under paragraph (d)(1) of this section and 10 ppm.